PSYCHOTHERAPY NOTES

HIPAA Privacy ♦ December 2005

TMA Privacy Office Guidance

Records Management ♦ FOIA ♦ DUAs ♦ HIPAA Compliance ♦ Privacy Act/System of Records ♦ PIAs

Purpose

The DoD Health Information Privacy Regulation, DoD 6025.18-R, C5.1.2, establishes requirements for the use and disclosure of psychotherapy notes. This policy and guidance paper clarifies this regulatory authority and ensures that the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule (45 CFR 164.508(a) (2)) is followed when psychotherapy notes are used or disclosed.

Definition

Psychotherapy Notes are detailed notes that are recorded in any medium (paper or electronic) by a healthcare provider who is a mental health professional documenting or analyzing the contents of conversation during a private counseling session or a group, joint, or family counseling session.

Psychotherapy notes are separated from the rest of the individual's medical record. Explicitly excluded from the definition of psychotherapy notes are: results of clinical tests, the modalities and frequencies of treatment furnished, and counseling session start and stop times and any summary of the diagnosis, functional status, the treatment plan, symptoms, prognosis and progress to date.

Background

To qualify for the definition and the increased protection granted to psychotherapy notes by the HIPAA Privacy Rule, psychotherapy notes must be created and maintained for the use of the provider who created them, and must not be the only source of any information that would be critical for the treatment of the patient or for getting payment for the treatment. Any notes that are routinely shared with others, whether as part of the medical record or otherwise, are not psychotherapy notes as defined by DoD 6025.18-R and the Privacy Rule.

Policy

Psychotherapy notes recorded in any medium (paper or electronic) by a mental health professional in the Military Health System (MHS), must be kept by the author and maintained separately from the rest of the patient's medical record or any other clinical records such as behavioral health clinic records.

Guidance

CEs are permitted a broad range of uses and disclosures of Protected Health Information (PHI) for Treatment, Payment and Healthcare Operation without permission from the patient. For psychotherapy notes, the "extra protection" provided by the HIPAA Privacy Rule stipulates that the use or disclosure of

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such notes requires an authorization, except as needed to carry out the specific TPO activities listed in DoD 6025.18-R, C5.1. For all other uses and disclosures (including other TPO activities), the CE must obtain an authorization from the patient in accordance with the HIPAA Privacy Rule.

The extra protections that are granted to psychotherapy notes include the right of the mental health provider or the CE to deny a patient access to the psychotherapy notes without providing the individual an opportunity to review the decision. This protection is dependent upon the fact that the notes are maintained separately from the patient's medical record. While there is no rule that specifies what "separate" means, it is generally accepted to physically disconnect the files by storing them in separate drawers or other filing spaces (physical or virtual). If the provider, in his or her professional judgment, includes the notes in the patient's medical and/or clinical record, then these privileges no longer exist. The notes are considered part of the medical record and are releasable under the same rules and restrictions as the rest of the PHI contained in the medical record.